85-837

No._____

Supreme Court, U.S.
FILED
NOV 15 1985
JOSEPH F. SPANIOL, JR.
CLERK

In the

SUPREME COURT OF THE UNITED STATES

October Term, 1985

GEORGE L. KARAPINKA,

Petitioner

vs.

UNION CARBIDE CORPORATION,

Respondent

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF
APPEALS FOR THE SECOND CIRCUIT

GEORGE L. KARAPINKA
Petitioner pro se
3557 Collins Ferry Road, B-14
Morgantown, West Virginia 26505
(304) 599-8686

35 pp

QUESTION PRESENTED

Whether Court of Appeals by not granting the motion for recall of mandate, motion based on the violations of due process of law, concurred in those violations.

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Other Authorities

9 Moores Federal Practice (2nd Ed., 1983)

¶ 203.10 16

¶ 203.11 17

Petitioner pro se prays that a writ of certiorari issue to review the question presented above.

CITATIONS TO OPINIONS BELOW

The United States Court of Appeals for the Second Circuit denied my Motion to Recall the Mandate and for Leave to File Motion for Rehearing by it's Order of August 21, 1985, a copy of which is anexed hereto as a-1*.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. Sec. 1254(1).

STATUTORY PROVISIONS

Statutes

28 U.S.C. Sec. 1254(1): By writ of certi-

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* Appendix - page, below

orari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

28 U.S.C. Sec. 1338(a): The district courts shall have original jurisdiction of any civil action arising under any Act of Congress relating to patents, plant variety protection, copyrights, and trademarks. Such jurisdiction shall be exclusive of the courts of the states in patent, plant variety protection and copyright cases.

28 U.S.C. Sec. 2201: In a case of actual contraversy within its jurisdiction, except with respect to Federal taxes other than actions brought under section 7428 of the Internal Revenue Code of 1954 or a proceeding under section 505 or 1146 of title 11, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

28 U.S.C. Sec. 2202: Further necessary or proper relief based on a declaratory judgmant or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment.

35 U.S.C. Sec. 261: Subject to the provisions of this title, patents shall have the attributes of personal property.

Applications for patents, patents, or any intrest therein, shall be assignable in law by an instrument in writting. The applicant, patentee, or his assigns or legal representatives may in like manner grant and

convey an exclusive right under his application for patent, or patents, to the whole or any specified part of the United States.

A certificate of acknowledgment under the hand and official seal of a person authorized to administer oath within the United States or, in a foreign country, of a diplomatic or consular officer of the United States or an officer authorized to administer oath whose authority is proved by a certificate of a diplomatic or consular officer of the United States, shall be prima facie evidence of the execution of an assignment, grant or conveyance of a patent or a application for patent.

An assignment, grant or conveyance shall be void as against any subsequent purchaser or morgagee for valuable consideration without notice, unless it is recorded in the Patent Office within three months from its date or prior to the date of such subsequent purchase or mortgage.

Rules

Rule 54(b) of Fed. R. Civ. P.: Judgment upon Multiple Claims or Involving Multiple Parties. When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the actionas to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry

of judgment adjudicating all the claims and the rights and liabilities of all the parties.

Rule 46(d)(1) of the Rules of the U.S. Court of Appeals for the Second Circuit: A notice of appearence must be filed in each case by counsel of record and, if different by counsel who will argue the appeal, not later than the date of filing the brief on a form to be provided by the clerk.

STATEMENT OF THE CASE

The Complaint (A-4)*, invoking the jurisdiction of the District Court on the basis of 28 U.S.C. Sec. 1338(a), 2201, 2202, and 35 U.S.C. Sec. 261, and which Complaint charged Union Carbide with illegally obtaining the Assignments (A-8,10) to my U.S. Patents No. 3,709,853 and No. 3,756,998 had been filed December 19, 1983 in the U.S. District Court for the Northern District of New York; the District Court was asked to declare the patent Assignments in A-8 and A-10 to be null and void. The Complaint also charged that the U.S. Patents listed in Paragraph 7 (A-5) of the Complaint are invalid

* Appendix-page. Ten copies of this Appendix were filed in the Court of Appeals 12/17/84.

The Complaint was dismissed (A-48) for failure to state the claim, with leave to file an amended complaint in 30 days. Motion for Reconsideration was denied April 13, 1984. (A-61). In my Memorandum in support of that Motion (filed April 2, 1984), which had been served upon Union Carbide on March 28, 1984, on pages 4-5 (A-52,53) I gave a very definite statement about my unpatented by me inventions and seven Union Carbide's Patents containing them with my letter to Union Carbide of April 18, 1978 (A-56) describing these inventions, attached to that Memorandum. I was not permitted by the District Court to present any of my argument in support of that Motion.

The Amended Complaint, invoking the jurisdiction of the District Court under 28 U.S.C. Sec. 1338(a), 2201, 2202, and under 35 U.S.C. Sec. 261, was filed April 13, 1984. It charged Union Carbide with obtaining the Assignments (A-74, A-76) of my U.S. Patent

Applications No. 138,611 and No. 767,508 which have resulted in U.S. Patents No. 3, 709,853 and No. 3,756,998 respectively, contrary to the decision of the Supreme Court in United States v. Dubilier Condenser Corp 1932, 289 U.S. 178, 186-9. I pray the District Court in my Amended Complaint to declare the Assignments of these Patents, which have been recorded in the U.S. Patent Office in accordance with 35 U.S.C. Sec. 261, to be null and void and to declare the titles to these Patents to be mine and to order Union Carbide to transfer to me all the revenue and royalties derived from licensing the inventions of these Patents. I am also asking the District Court to declare U. S. Patents in Paragraph 11 of the Amended Complaint (A-72), which have been issued to Union Carbide, to be invalid because they disclose and/or claim my inventions which are unpatented by me without listing me as an inventor or a coinventor. Amended Complaint was dismissed July 10, 1984 for failu-

re to state the claim. See Exhibit A of Union Carbide's motion for dismissal of my appeal which is being requested from the Clerk of the Court of Appeals in accordance with Rule 19.1 of the Rules of this Court. The motion that resulted in that Order was argued on May 25, 1984 in the District Court. On questioning by the District Court I gave a complete explanation of my unpatented inventions and of the seven Union Carbide's Patents listed in Paragraph 11 of the Amended Complaint. See A-114, 115. Motion for reconsideration was denied August 13, 1984. In both of these Motions I was not permitted to make my arguments. Notice of Appeal (A-157) was delivered to the Clerk of the District Court on August 23, 1984 and thus it was filed on that date. The Clerk stamped this Notice of Appeal "Filed" on August 28, 1984.

July 30, 1984 Union Carbide filed its motion to dismiss my Amended Complaint that

had already been dismissed by the District Court in its Order of July 10, 1984. See Exhibit A of Union Carbide's motion for dismissal of my appeal, page 6. More definite statement requested needlesly by Union Carde was supplied by me in A-56, 57 and by the transcripts of May 25, 1984 proceedings which Union Carbide ordered from the reporter and obtained it on or about June 11, 1984. See A-117. This transcript was ordered by me August 27, 1984; it was filed in the Court of Appeals with the supplementary record on January 11, 1985 after the Court of Appeals dismissed my appeal and had issued its Mandate on January 3, 1985. The redundant District Court's Order of August 28, 1984 (Exhibit D of Union Carbide's motion for dismissal of my appeal) and the judgment of September 21, 1984 were filed after the Notice of Appeal had been delivered to the Clerk of the District Court on August 23, 1984 and therefore these documents were

issued outside of District Court's jurisdiction. See a-4, Affidavit Item 4 filed July 10, 1985.

The copies of the Notice of Appeal and of the District Court's Docket Entries were filed by the Clerk of the Court of Appeals on November 5, 1984 after I had filed on October 26, 1984 my motion in the District Court asking that Court to direct the Clerk of that Court to transmit those documents to the Court of Appeals.

November 30, 1984 Union Carbide filed its motion to dismiss my appeal on the basis of Rule 54(b) of F.R.C.P. Union Carbide stated there incorrectly that the District Court's Order of July 10, 1984 appealed from was interlocutory and that the redundant Order of August 28, 1984, which the District Court did not have any jurisdiction to issue, was the final Order. Appellant's memorandum in opposition to that motion and the supporting affidavit were fi-

led December 7, 1984.

December 20, 1984 I mailed to the Clerk of the Court of Appeals my Motion for the direction of the Clerk of the Court of Appeals to obtain and to file the transcripts of the District Court's proceedings of May 25, 1984 and of August 3, 1984. See a-6, Item 12, Affidavit filed July 10, 1985. This Motion was never filed and was totally ignored by the Clerk. See a-3.

January 8, 1985, after the Mandate had been issued on January 3, 1985, I received in the mail the copy of the Court of Appeals Order of dismissal of my appeal of December 24, 1984. My Motion for Rehearing was mailed to the Clerk of the Court of Appeals on January 9, 1985; it was filed January 15, 1985. See a-4, Items 2,3. This untimely Motion was dismissed by the Order of the Clerk of the Court of Appeals on March 20, 1985.

My examination of the entire record in

No. 84-7916, of all the original papers, in the Court of Appeals on April 22, 1985 and more specifically on July 10, 1985 showed that Union Carbide did not file its Notice of Appearence. See a-9 Item 3, Affidavit dated August 30, 1985. So far Union Carbide did not supply the Court of Appeals with a proof or a sworn statement that its Notice of Appearence was mailed by depositing it into the U.S. Mail or otherwise delivered to the Court of Appeals.

July 10, 1985 I filed in the Court of Appeals my timely Motion for Recall of Mandate and for Leave to File a Motion for Rehearing, motion based on the above enumerated and discussed below violations of due process of law. In that Motion I called to the Court of Appeals attention the fact that Union Carbide did not file its Notice of Appearence. This Motion was denied by the Order of August 21, 1985. The copy of that Order was delivered to me by mail on

August 29, 1985. In my motion for rehearing of that motion supported by the Affidavit, see a-9, which was mailed to the Clerk of the Court of Appeals on August 31, 1985 I called again to that Court's attention the fact that Union Carbide did not file its Notice of Appearence. So far I did not receive any communication from the Court of Appeals regarding that Motion.

ARGUMENT

COURT OF APPEALS BY NOT GRANTING THE MOTION FOR RECALL OF MANDATE, MOTION BASED ON THE VIOLATIONS OF DUE PROCESS OF LAW, CONCURRED IN THOSE VIOLATIONS

To prevent injustice, it is a longstanding tradition of the United States Court of Appeals to recall the mandate containing that injustice and to grant justice. See for example Gradsky v. United States, (5th Cir., 1967) 376 F.2d 993,995 and Sun Oil Co. v. Burford (5th Cir., 1942) 130 F.2d 10, 13. In my case where the District Court dismissed my Amended Complaint without permitting

me to present my arguments in opposition to that dismissal, see a-5 Items 8,9, Affidavit filed July 10, 1985, A-39,81,116,148*, Windsor v. McVeigh, 1876, 98 U.S. 274, 278; and where the Court of Appeals without a true base granted the motion for the dismissal of my appeal and additionally committed violations of due process of law, grave injustice was done to me by those Courts. As the result of this injustice my human rights were violated. Additionally I can not obtain the titles to my patents that are rightfully mine in accordance with United States v. Dubilier Condenser Corp., 1932, 289,U.S. 178,186-9. Illegal licensing of the inventions of these patents of mine is generating very high revenue for Union Carbide, revenue that is rightfully mine.

The base of Union Carbide's motion for dismissal of my appeal, Rule 54(b) of F.R.C.

* The copy ofthe Appendix is being requested from Court of Appeals to be sent to this Court in accordance with Rule 19.1 of the Rules of this Court

P., was incorrect. The District Court's Order of July 10, 1984 appealed from, was final. See Exhibit A of that motion, page 6. All of the claims of my Amended Complaint had been dismissed by that Order, although there was some vague reference to a nonexisting claim there. The redundant District Court's Order of August 28, 1984 dismissed the same claims once more. See Exhibit D of that motion. The Order of August 28, 1984 was the result of a baseless motion of Union Carbide for a more definite statement, the statement that Union Carbide received in my letter to it of April 18, 1978 the copy of which (A-56,57) had been served upon Union Carbide on March 28, 1984 and from the questioning of me by the District Court on May 25, 1984 (A-114) the transcript of which proceedings Union Carbide ordered and received it from the reporter on or about June 11, 1984. See A-117. This transcript had been ordered by me August 27, 1984 but it

had been filed with the supplemental record in the Court of Appeals on January 11, 1985 after the motion for the dismissal of my appeal was granted December 24, 1984 and after the issuance of the mandate on January 3, 1985. See a-2,3. My motion for the direction of the Clerk of the Court of Appeals to obtain and to file the transcripts of District Court's proceedings of May 25,and August 3, 1984, and supporting Affidavit had been mailed to the Clerk of the Court of Appeals on December 20, 1984. See a-6, Item12 That Motion was never filed nor returned to me, it was just discarded. This act of the Court of Appeals is a gross violation of due process of law. Therefore, there was no basis for the District Court to issue its redundant Order of August 28, 1984 even if it had jurisdiction to do so, and the Order of July 10, 1984 was not interlocutory but was final. Also there was no basis for the Court of Appeals to grant Union Carbide's motion for the dismissal of my appeal on

the ground of Rule 54(b) of F.R.C.P. because my case has been terminated in the District Court before the Notice of Appeal was filed.

My appeal was also proper on the collateral basis in accordance with Cohen v. Beneficial Loan Corp., 1948, 337 U.S. 541, 546 and with Windsor v. McVegh, supra, because I was not permitted to present my arguments to the District Court in the motion that resulted in the Order of July 10, 1984. See A-111.

The District Court did not have jurisdiction to issue the Order of August 28, 1984. (Exhibit D of Union Carbide's motion for the dismisal of my appeal). My Notice of Appeal was delivered to and was received by the Clerk of the District Court on August 23, 1984 (see a-4, Item 4 and a-8, Exhibit 1) and therefore it was filed on that date and not August 28, 1984 the date that the Clerk decided to stamp it "Filed". See Rule 4 of F.R.A.P. and 9 Moores Federal Prac-

tice (2nd Ed., 1983) §203.10 (3-41) which states:"The notice of appeal is filed with the clerk when it is received into his custody and control". On August 23, 1984 with the receipt by the District Court's Clerk of my Notice of Appeal the jurisdiction over my case had passed to the Court of Appeals and the District Court did not have jurisdiction to issue the redundant Order of August 28, 1984 which Union Carbide claims to be the final Order. See 9 Moores Federal Practice (2nd Ed., 1983) §203.11:

> "The filing of a timely and sufficient notice of appeal has the effect of immediately transferring the jurisdiction from the district court to the court of appeals with respect to any matters involved in the appeal. It divests the district court of authority to proceed further with respect to such matters, except in aid of the appeal,"...

The Court of Appeals, therefore, did not have any basis for granting Union Carbide's motion for the dismissal of my appeal.

The Court of Appeals violated due process of law by not giving me the opportunity to

file a timely motion for rehearing. The Court of Appeals, thus, refused to hear me, Windsor v. McVeigh, supra, as shown by this sequence of events. My examination of the Docket Entries of the Court of Appeal on December 24, 1984 at about 1:30PM showed no entry of Court of Appeals' Order of Decembeber 24, 1984. See a-6, Item 10. The copy of that Order was delivered to me by mail on January 8, 1985; I mailed my Motion for Rehearing to the Clerk of the Court of Appeals on January 9, 1985 (see a-4, Items 2,3) without knowing that the Mandate had been issued January 3, 1985 (a-3), five days after my receipt of the Order of dismissal. This Mandate was received by the District Court on January 7, 1985. The issuance of the Mandate 10 days after the issuance of the Order of dismissal is contrary to Rule 41(a) of F.R.A.P. which requires a period of 21 days:

"The mandate of the court shall issue 21 days after the entry of judgment unless the time is shortened or enlarged by order."

This period was not shortened by the Order of the Court of Appeals. See a-3. My Motion for Rehearing which had been filed in the Court of Appeals on January 15, 1985 as petition for rehearing (a-3), 12 days after the issuance of the Mandate, was untimely due to the violation of due process of law by the Court of Appeals. This Motion for Rehearing was denied by the Order of the Clerk of the Court of Appeals of March 20, 1985 (a-3) who does not have the authority to deny any motion or petition, specially after the issuancce of the Mandate. The copy of that Order is being requested from the Court of Appeals in accordance with Rule 19.1 of the Rules of this Court.

The entire record in the Court of Appeals shows that Union Carbide did not file its Notice of Appearence. See a-2,3 and a-6 Item 11 of Affidavit filed 7/10/1985; a-9 Item 3 of Affidavit dated 8/30/1985. This failure to file the Notice of Appearence before any proceedings is taken by the Court

of Appeals is contrary to Rule 46(d)(1) of the Rules of the Court of Appeals for the Second Circuit. Union Carbide's motion for the dismissal of my appeal was, therefore, filed contrary to that Rule and in violation of due process of law.

Oversight of those violations by the Court of Appeals could have been considered as errors committed by that Court, but when those violations are presented to that Court in the motion for recall of mandate and that motion is denied without any explanation, then that Court is supporting those violations.

CONCLUSION

For all the foregoing reasons, I the petitioner respectfully request this Court to grant this Petition for a Writ of Certiorari.

Respectfully submitted,

George L. Karapinka
Petitioner pro se

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

KARAPINKA,
Appellant
vs.
UNION CARBIDE,
Appellee

84-7916

Motion for Recall of Mandate and for Leave to File Motion for Rehearing

ORDER

IT IS HEREBY ORDERED that the motion be and it hereby is denied.

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

FILED

AUG 21 1985

Elaine B. Goldsmith, Clerk

/s/ Thomas J. Meskill
Thomas J. Meskill, U.S.C.J.

/s/ Amalia L. Kearse
Amalia L. Kearse, U.S.C.J.

Aug. 21, 1985
Date

/s/ Richard J. Cardamone
Richard J. Cardamone, U.S.C.J

(by TJM)

GENERAL DOCKET

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

84-7916

	DATE	FILINGS-PROCEEDINGS
SM	11/05/84	Copy of district court docket entries and notice of appeal on behalf of Appellant Karapinka filed (Pro se)
RAG	11-05-85	Record on appeal filed (original papers of district court) (pro se)
RAG	11-05-84	Appellant Karapinka Form C filed (pro se)(w/pfs)(Received 09-04-
RAG	11-05-84	Appellant Karapinka Form D filed (pro se) (Received 09-04-84)
RAG	11-05-84	Appellee Union Carbide Corp. Counter-designation of the Appendix filed (w/pfs)(Received 10-15-84)
JJ	11/9/84	Scheduling Order #1 Filed (Pro Se)
MM	11-30-84	Appellee UNION CARBIDE motion for dismissal of the appeal for lack of jurisdiction filed (w/ps)
SM	12-07-84	Appellant Karapinka's memorandum in opposition to the motion of defendant appellee Union Carbide Corporation for dismissal of the appeal for lack of jurisdiction filed (W/PS)(Pro se)

jc	12-17-84	Appellant brief filed w/ps
jc	12-17-84	Appellant apendix filed w/ps
jc	12-17-84	Scheduling Order No. 2 filed (Pro-se)
JJ	12/24/84	Oder granting Appellee UCarbide Motion for Dismissal of the Appeal filed; (w/pfs) (Endorsed on Motion filed 11/30/84) (TJM, AlK, RJC CJJ)
JJ	1-3-85	Issued certified copy of order dated 12/24/84
cas	1-11-85	Supplemental record on appeal filed (original papers of district court)
SM	1/15/85	Appellant Karapinka petition for rehearing filed (W/PS) (Pro se)
mjf	3-20-85	Order denying appellant KARAPINKA petition for rehearing filed

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

GEORGE L. KARAPINKA,
Appellant
vs.
UNION CARBIDE CORPORATION,
Appellee
No. 84-7916

AFFIDAVIT OF GEORGE L. KARAPINKA

State of New York)
County of New York)

George L. Karapinka of full age being duly sworn upon his oath deposes and says:

1. I make this Affidavit in support of my Motion to Recall the Mandate and for Leave to File Motion for Rehearing.

2. The copy of the Order of this Court of December 24, 1984 was delivered to me by mail on January 8, 1985.

3. I mailed my Motion for Rehearing to the Clerk of this Court on January 9, 1985.

4. I mailed my Notice of Appeal to the Clerk of the U.S. District Court in Albany, N.Y on August 21, 1984. I was informed by telephone by the Clerk's Office on August 23, 1984 that my Notice of Appeal had been received by that Office. See Exhibit 1.

5. I paid my appeal's fee of $70.00, $5.00 filing fee and $65.00 docketing fee, on August 28, 1984. The copy of the cancelled check was enclosed with my letter to the Clerk of this Court of November 12, 1984.

6. I ordered the transcripts of the District Court's proceedings in this case of May 25, 1984 and of August 3, 1984 on August 27, 1984.

7. I was not permitted by the District Court to present my arguments to that Court on March 23, 1984 and on April 13, 1984.

8. During my argument in opposition to Union Carbide Corporation's motion under Rule 12(b)(6) for Partial Dismissal of the Amended Complaint and for a More Definite Statement under Rule 12(e) on May 25, 1984 I was interrupted and I was not permitted by the District Court to complete my argument.

9. During my argument in support of my Motion to Reconsider District Court's Judgment of July 10, 1984 on August 3, 1984 I was interrupted and I was not permitted by the Dist-

rict Court to complete my argument.

10. On December 24, 1984 during my examination of the Docket Entries of this case No. 84-7916 at about 1:30 PM in the Clerk's Office of this Court I did not see the entry there of this Court's Order of December 24, 1984 granting Union Carbide Corporation's motion for dismissal of my appeal.

11. On december 24, 1984 during my examination of the Docket Entries of this case No. 84-7916 in the Clerk's Office of this Court I did not see there the entry of the Notice of Appearence for any of Union Carbide Corporations attorneys or for Union Carbide Corporation.

12. On December 20, 1984 I served and mailed (first class postage prepaid) to the Clerk of this Court the supporting Affidavit of George L. Karapinka and the Notice of Motion for Direction of the Clerk of the Court of Appeals to obtain and to file the transcripts of the Court proceedings of the Dist-

rict Court on May 25, 1984 and on August 3, 1984.

/s/ George L. Karapinka

George L. Karapinka

Sworn and subscribed
before me this 10 th day
of july 1984

/s/ Josephine Parker

JOSEPHINE PARKER
Notary Public State of New York
No. 03-4745496
Qualified in Bronx County
Certificate filed in New York County
Term expires March 30, 1987

Exhibit 1

George L. Karapinka
3557 Collins Ferry Road,
B-14
Morgantown, West Virginia
26505

August 24, 1984

Mr. J.R. Scully, Clerk
United States District Court
U.S. Courthouse
P.O. Box 950
Albany, New York 12201

RE: George L. Karapinka v. Union Carbide Corporation, Civil Action No. 83-CV-1682

Dear Mr. Scully:

In accordance with the telephone call from your Office on August 23, 1984 I am enclosing the appeal fee of $70.00 and the duplicating fee of $17.50 for the copies of the Docket Entries and of the transcipts of the Court's proceedings in the above captioned case on March 23, 1984 and on April 13, 1984, which copies I have requested in my letter to you of August 21, 1984.

Sincerely yours,

/s/ George L. Karapinka

George L. Karapinka
Plaintiff pro se

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

GEORGE L. KARAPINKA, Appellant	)	
vs.	)	No. 84-7916
UNION CARBIDE CORPORATION, Appellee	)	

AFFIDAVIT OF GEORGE L. KARAPINKA

State of West Virginia)
)
County of Monongalia)

George L. Karapinka of full age being duly sworn upon his oath deposes and says:

1. I make this Affidavit in support of my Motion for Rehearing of the Motion for Recall of Mandate and for Leave to File Motion for Rehearing.

2. On August 29, 1985 the Order of this Court of August 21, 1985 denying my Motion for Recall of Mandate and for Leave to File Motion for Rehearing was delivered to me by mail.

3. I have examined on July 10, 1985 in this Court the Record in this case No. 84-7916 and I have found that this Record con-

tained no Notice of Appearence for Union Carbide Corporation or any of it's attorneys.

/s/ George L. Karapinka
George L. Karapinka

Sworn and subscided
before me this 30 th day
of August 1985

/s/ Margaret A. Craig
Notary

Commission Expires 12/3/90

Margaret A. Craig
Notary Public
Monongalia County, W.Va.